

Subject to approval by the Guardianship/Conservatorship Interim Committee

**GUARDIANSHIP AND CONSERVATORSHIP
INTERIM COMMITTEE
MINUTES**

Friday, November 19, 2004

9:30 a.m.

Gold Room

State Capitol, Boise, Idaho

The meeting was called to order at 9:35 a.m. by Cochair Senator Bart Davis. Other committee members present were Cochair Representative Debbie Field, Senators Patti Ann Lodge, Dick Compton and Bert Marley and Representatives Leon Smith and Allen Andersen. Representative Sharon Block was absent and excused.

Others present included: Dede Shelton, Ada County Guardian Monitoring Program; Sarah Scott and Lois Bauer, Idaho Commission on Aging; Christy Walbuck, Client-Focused Fiduciary Services; Mary Jo Butler, Co-Ad, Inc.; Corrie Keller, Idaho Supreme Court; Bart Butler, Seventh Judicial District; Cameron Gilliland, Department of Health and Welfare; Georgia Mackley, Idaho Kinicare/AARP; Gladys Schroeder, Senator Larry Craig's Office; and David Kennedy, Estate Management and Guardian Services. Legislative Services Office staff members present were Caralee Lambert and Toni Hobbs.

Senator Compton moved that the minutes of the October 19, 2004, meeting be approved. The motion was seconded by **Senator Marley** and approved by a unanimous voice vote.

Representative Field stated that she had met with Senator Craig and the staff of the Committee on Aging in Washington, D.C., and that a pilot project is of high interest to everyone involved. She said Idaho could be used as a model for partnerships to fix the issues facing the aging population and guardianships generally.

Under the direction of **Senator Davis**, the Committee reviewed a list of issues and proposals that have come before the Committee in its July, August and October meetings. A copy of this list is available in the Legislative Services Office. In regards to the concern of "cliques" of guardians, court visitors and other parties, **Bob Aldridge** stated that the real problem of such cliques is perceived to be in Ada County, given the relative paucity of cases outside of this area and the fact that many other jurisdictions do not have a judge dedicated to be a probate judge and to oversee guardianships. Therefore, **Mr. Aldridge** stated that it would be difficult to craft legislation statewide unless an office of the public guardian was established at the state level.

In response to a question from **Senator Davis**, **Mr. Aldridge** stated that there was not yet a need for the Legislature to take a role on this issue. Local court rules currently apply, and under the direction of Judge Bieter for the 4th Judicial District, there is a rotating list of guardians and conservators and a pro bono requirement.

Sarah Scott, Idaho Commission on Aging (ICOA), stated that she was aware of the perceived “clique” problem in Ada County, but noted that the ICOA does not play a specific role in policing this. The cliques are less of a problem in rural areas where there is not a large pool of resources. She suggested that Judge Bieter’s methods be given time to see how they work in alleviating the problem in Ada County.

Corrie Keller, staff of the Idaho Supreme Court, stated that Judge Bieter hopes the pilot program will be successful and is willing to help get the program into place.

Senator Compton asked about the judiciary’s role in guardianship cases. Currently, there appears to be no follow-up on cases. He said that he talked to people at the county level and they felt this was the major issue facing the guardianship system. **Senator Compton** stated that there needs to be some procedure in place statutorily directing the courts to review the cases.

Representative Andersen stated that there needs to be additional funding for assistance and personnel for the courts to ensure that cases are reviewed and notices are sent out when necessary.

In response to a question from **Senator Davis**, **Ms. Scott** said that the statutory change required would be to add language stating that reports “shall be reviewed” by the court upon filing.

Representative Smith said that as to the filing requirement, this is already in statute but it is fairly voluntary because there is no enforcement by the courts. He asked what enforcement is recommended.

Mr. Aldridge stated that the statute should make clear that the court must complete a review and provide that show cause hearings may be required. He added that the court should also be given the authority to impose fines when reports are not filed as required. In response to a question from **Senator Davis**, **Mr. Aldridge** continued by stating that statutory language would provide a series of accelerating options to the court, such as inquiries, show cause hearings, mandatory set times to provide reports, and removal and replacement of guardians or conservators who fail to satisfy the court’s requests.

Senator Davis asked who would act as the prosecutor in determining whether good cause has been shown when a guardian or conservator has failed to file timely reports. **Mr. Aldridge** answered that this would be the role of the guardian ad litem.

Representative Andersen suggested that a training video or booklet be produced for potential

guardians so they can understand more clearly their function and responsibilities.

Mr. Aldridge stated that the Idaho State Bar has detailed books that are distributed to the courts in all the counties to be handed out to each conservator. This system currently is not working, however, either because the books are not being passed out or because they are not being returned by the conservators after review.

Representative Andersen stated that a video may be a more helpful tool for nonprofessionals.

Representative Smith suggested that the courts in the counties in which the pilot projects would be conducted could promulgate rules for enforcement and sanctions as opposed to statewide statutory provisions that could lead to chaos in smaller counties that are not equipped to handle the reviews at this point.

In response to a suggestion by **Senator Davis**, **Ms. Scott** stated that a video is available through the ICOA and that the ICOA's website could include more information, such as a link to the conservator handbook that has been discussed. **Mr. Aldridge** added that while the probate forms handbook was proprietary, the conservator handbook and other handouts are not and should be distributed as widely as possible.

Senator Compton asked about the level of burden imposed by a requirement that annual reports be reviewed. **Mr. Aldridge** explained that such a review involved a number of steps. Clerks would need to send the reports to the judges for their review; this is currently not happening. Furthermore, some judges are not trained in what they should be reviewing, so the review is cursory at best.

Senator Compton stated that in regard to training, Kootenai County has an excellent program with dedicated people, but in the other Northern counties, there are no programs and the system is not working well. He asked if, in the past, there had been one person in either the office of the Governor or the Attorney General who went around the state to provide the necessary training.

Mr. Aldridge answered that in the past there was a staff person from the ICOA who worked with the boards of community guardians across the state, but he said that the training needs to be broader to include all guardians. This would require funding.

Ms. Scott added that this was a valuable idea, especially if the training was done on a countywide basis through the courts.

Dede Shelton, Ada County Guardian Monitoring Program, said that there were really two issues being discussed. First, there is the training of guardians and conservators, *i.e.* those who petition the court. Second, there is the concept of training an individual in each county to do the monitoring and auditing. This could be the court clerks or judges, who could provide a "how to" training on monitoring reports and what to look for in terms of red flags. **Ms. Shelton** noted that

Ada County was fortunate in that volunteers were available to carry out a number of these tasks.

In response to a question from **Senator Davis**, **Ms. Shelton** stated that under the pilot project, the Department of Finance would not be telling judges whether they were doing a good job of monitoring guardians. Instead, the Department would scan the audits that were already filed to see if any red flags arose; if so, then it would be up to the courts to institute enforcement proceedings.

Representative Smith stated that the auditing should be kept at the county and not the state level. **Mr. Aldridge** explained that such auditing would be more efficient if it were done at the state level by the Department of Finance because one to two people who specialize in guardianship report auditing would be doing the work as opposed to one person in each county or judicial district who may or may not have any specialized skills in that area. Furthermore, the state level auditing would be more uniform because the reports would be judged on the same basis.

In response to a question from **Senator Davis**, **Ms. Scott** said that the Department of Finance, rather than the ICOA, already has the necessary fiscal auditing capabilities.

Representative Smith stated he was worried about the bureaucratic problems inherent in a statewide auditing program. Of particular concern is the fact that there would be no one at the local level to talk to if there were problems. In response to a question from **Senator Davis**, **Representative Smith** explained that under current practice, some judges require the reports and so lawyers push their clients to get the reports done and submitted, but other judges are not so strict and consequently in those cases, lawyers do not push their clients and the reports are not submitted.

Mr. Aldridge stated that there is already a requirement that the reports be filed, so it is not a voluntary system at present. The question is one of review; in most cases, judges don't even know when a report has been filed unless that judge independently investigates the case.

In response to a question from **Senator Davis**, **Mr. Aldridge** stated that the duty of the Department of Finance to audit submitted reports on a statewide basis would come only after the pilot project, if such a review is deemed to be advantageous. The pilot project would demonstrate workable procedures involving court clerks with a uniform set of forms and a review for red flags by the Department of Finance. **Mr. Aldridge** clarified that the judicial districts involved in the pilot project may mandate the reviews by court rule, but nothing would be required in Idaho Code yet. The idea behind the pilot project is to pick three counties (Ada, Bonner and Payette) to participate.

Ms. Scott emphasized that Idaho Code should be revised now to state that reviews are required. It would be up to each judicial district to determine how those reviews are actually done. This statutory change should be done simultaneously with the pilot project.

Mr. Keller added that currently the reports are filed but often they are never reviewed. One problem is that judges are not CPAs, and therefore they may not know what to look for when conducting the required reviews.

Representative Smith stated that currently the notices go out to the attorney of record when a required filing is not done. He asked whether the sanctions discussed would apply to the attorney of record or the conservator.

Mr. Aldridge said that this is the duty of the guardian ad litem because they are supposed to be there for the duration of the case. This is a problem for smaller estates, however, because there may be a large burden on the guardian ad litem yet no compensation, so eventually this may need to be addressed by an office of the public guardian.

Senator Davis asked whether the show cause order for a failure to file a report would be independent of the review by the Department of Finance. **Ms. Scott** stated that once the conservator or guardian files the report with the court, then the court reviews the report and sends it on to the Department of Finance for further review. There is no further duty on the court unless the Department of Finance detects problems in the report, at which point it would be up to the court to determine the proper enforcement procedures.

Senator Lodge asked whether there was a limit on the size of the estates that would be reviewed under the pilot project by the Department of Finance. **Mr. Aldridge** said that such a limit could encourage conservators to file a report that made estates look smaller to escape a more detailed review. Often the smaller estates have more to lose, and if the funds are mishandled, the wards end up on Medicaid. He therefore would expect that all reports, regardless of estate size, be submitted to the Department of Finance for review. **Representative Smith** noted that some of the worst abuses involve smaller estates.

Senator Compton moved that the Committee recommend a statutory requirement that reports be reviewed by the courts, that enforcement and follow-up powers be given to the courts regarding these reports, and that the Idaho Legislature be encouraged to review the pilot project progress and results. The motion was seconded by **Representative Field**.

Representative Smith offered an amendment to the motion to specify that the pilot project should involve up to three counties and that federal assistance should be applied for in order to fund the pilot project. The motion, as amended, was approved by a unanimous voice vote.

Senator Compton stated that Idaho was not in a position to establish an office of the public guardian until the pilot project had been conducted and the results reviewed.

Ms. Scott stated that the pilot project does not address the many people in Idaho's communities for whom the appointment of a guardian is appropriate but, due to the lack of family and/or finances, no guardian is appointed. She said that the boards of community guardians, who are all

volunteers, are not taking these hard cases, and therefore the finances and conditions of many vulnerable people have no oversight. An office of the public guardian would address these cases. **Ms. Scott** said that Utah established such an office last year. **Ms. Shelton** added that many offices of the public guardian were independent, quasi-government agencies.

Representative Field noted that unfortunately some of these individuals end up on Medicaid when a guardian could have forestalled such a step. She asked how the office of the public guardian would work, and which agency would oversee those functions.

Ms. Scott stated that determining which cases actually go to the office of the public guardian can be a sticky issue because sometimes families have assets and could fight it out in court and we do not want those cases to go to the office of the public guardian to be determined at the expense of taxpayers. She said there may need to be some means-testing before the office of the public guardian would take on a case.

Representative Field said that such assets can evaporate quickly. For instance, she illustrated one case where the guardian and other persons assigned to a case went through an estate of \$600,000 in eighteen months.

Representative Smith stated that 2005 will be a tough budget year and the Idaho Legislature will probably not be receptive to funding a new office but that it might be supportive of a pilot project.

Lois Bauer, ICOA, stated that as she viewed it, the office of the public guardian would oversee training and promulgate rules, review cases, act as an ombudsman for the public and oversee licensure.

In response to a question from **Senator Compton**, **Mr. Aldridge** and **Ms. Shelton** agreed that an office of the public guardian would consist of a staff rather than just one person. **Ms. Scott** said that in other states, the office has worked in conjunction with the probate courts (*e.g.* California) or has been housed in the office of the attorney general.

Senator Compton moved that the Committee recommend that an office of the public guardian not be established at this point in time because there are still a number of questions as to where the office would be located, how it would function, and what funding would be necessary for its operations. **Representative Smith** seconded the motion. The motion was approved by a unanimous voice vote.

Representative Field emphasized that although the Committee ends its work this month, this is a good time to work on the pilot project given the state and federal help available.

Representative Smith made a motion that the Committee develop a resolution to encourage the establishment of a guardianship pilot project to include up to three counties in Idaho and to include the following elements:

1. Adoption of standards of practice for guardians.
2. Requirement that guardians be registered.
3. Consideration of an office of the public guardian in the pilot project counties.
4. Review of the strengths of Idaho law regarding the treatment and care of developmentally disabled persons and the Idaho Probate Code.
5. If federal or grant funding is available, provide funding for adult protection to seek guardians for cases where volunteers cannot be enlisted.

Representative Field seconded the motion. The motion carried on a unanimous voice vote.

Mary Jo Butler, Co-Ad, Inc., stated that the pilot project could require plan development or processes (*e.g.* similar to the Department of Health and Welfare's people-centered planning) to determine what an individual wants and to require that such a written plan be submitted to the court and include the finances expected to be spent over the term of the guardianship. Ms. Butler explained that such a report would provide a basis for comparison of the plan versus the actions of a guardian, and it would also help to weed out bad guardians and cases where a guardian may not be needed in the first place.

By a unanimous consent request motion, the Committee unanimously agreed by a voice vote that **Mr. Aldridge** may assert that the Committee agrees conceptually with the following items, but that the specific language brought forth by **Mr. Aldridge** in terms of legislation has not been reviewed by the Committee:

1. Clarify that a guardian ad litem is assigned to a case until released by a judge due to the termination of the guardianship or the appointment of another guardian ad litem.
2. Require the submission to the court of the fees to be charged for review and approval prior to payment by the ward's estate.
3. Broaden guardian information requirements and giving the courts more authority to require more information, part of which may be sealed.
4. Set forth a more thorough listing of annual report submission requirements.
5. Clarify the protections accorded to wards, *e.g.* visitation rights.
6. Require that alternatives to guardianship first be examined.

Cameron Gilliland, Idaho Department of Health and Welfare, stated that the Department wants the authority to provide background checks for people who want to be guardians for persons with developmental disabilities. Such authority would require a statutory revision. **Mr. Aldridge** stated this would be reflected in the upcoming legislation.

By a unanimous consent request motion, the Committee unanimously agreed by a voice vote that:

1. The Committee would not recommend funding for Adult Protection to seek guardians for particular cases where volunteers could not be enlisted, but that such funding may be included in the pilot project if state funding is not involved.
2. The Committee would not at this time recommend that a statutory duty to report be imposed upon parties, such as bankers, when abuse by guardians is suspected. (**Senator Marley** noted that he wanted the idea to be considered in the future and referred to the impact realized by the duty imposed upon teachers to report suspected child abuse.)
3. The Committee would not recommend that discretion be shared between the police and Adult Protection Services in determining whether exigent circumstances exist. (**Ms. Scott** noted that law enforcement training and collaboration is part of the process in trying to get elder abuse cases prosecuted).
4. The Committee would not recommend that guardians must be certified.

Senator Marley moved that the Committee not recommend that Idaho require guardians to be licensed at this time or that counties be required to pay for guardianship services for indigent wards. **Senator Compton** seconded both motions. The motions carried on unanimous voice votes.

Senator Compton noted that the Area Agency on Aging has been a bulwark against many of the abuses in guardianship cases and that the agencies were working off of a four-year old budget. He asked that the members individually consider restoring funding for the agencies.

Representative Field stated that the respective members could take that information back to JFAC for its consideration.

Senator Davis referred to a report submitted by Representative Block and noted that some of the ideas within that report had been included in the Committee's recommendations, referred to the pilot project, or shelved.

In response to a question from **Senator Compton**, **Senator Davis** said that the pilot project would be operated by and within the judicial districts and counties that choose to participate in the project.

By a unanimous consent request that was approved by a unanimous voice vote, the Committee agreed that the cochairs may submit a letter of support and request that money be made available to the pilot project through grant and federal funds.

Senator Davis noted that the telephone conference that had been tentatively scheduled for November 29th was no longer necessary. The meeting was adjourned at 12:30 p.m.